

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

John B. Schwartz
SSN XXX-XX-5406

CASE NO. 04-44715 RJK

CHAPTER 13 CASE

Debtor.

NOTICE OF OBJECTION TO CONFIRMATION OF PLAN

TO: Debtor and other entities specified in Local Rule 3015-3.

1. World Savings Bank, FSB (hereinafter "Secured Creditor") moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this objection at 10:30 a.m. on October 21, 2004, before the Honorable Robert J. Kressel in Courtroom 8 West at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any reply to this objection must be filed and delivered not later than 10:30 a.m. on October 20, 2004, which is 24 hours before the time set for the hearing, or filed and served by mail not later than October 18, 2004, which is three days before the time set for the hearing. **UNLESS A REPLY OPPOSING THE OBJECTION IS TIMELY FILED, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this objection pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed August 24, 2004. The case is now pending before this Court.

5. This objection arises under 11 U.S.C. § 1322 and Local Rule 3007-1.

6. Debtor is indebted to Secured Creditor in the principal amount of \$125,625.00, as

evidenced by that certain Promissory Note dated April 21, 2000, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain Mortgage Deed dated April 21, 2000, executed by John B. Schwartz, an unmarried man, recorded May 22, 2000, as Document No. 3281365, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B".

8. Said plan is objected to on the basis that it is not feasible and that Debtor will not be able to make all payments under the plan and to comply with the plan as contemplated by 11 U.S.C. § 1325 (a)(6).

9. Said plan is also objected to on the basis that Debtor is delinquent in his pre-petition monthly mortgage payments to Secured Creditor for the months of January, 2003 through August, 2004, in the total amount of \$25,468.26, including late charges and that said delinquency existing in Debtor's mortgage loan cannot be cured within a reasonable time as required by 11 U.S.C. § 1322(b)(5). In In re Newton, 161 B.R. 207 (Bkrtcy.D.Minn. 1993), this Court reaffirmed its previous finding that more than 12 months is ordinarily not a reasonable time to cure a default in pre-petition homestead mortgage payments under 11 U.S.C. § 1322(b)(5). The plan, as proposed by Debtor, would require approximately 39 months to complete based on the Proof of Claim filed by Secured Creditor. Therefore, the plan does not comply with the provision of Chapter 13 of the Bankruptcy Code, as contemplated by 11 U.S.C. § 1325(a)(1).

10. The value of the property as scheduled by Debtor is \$210,000.00 subject to Secured Creditor's mortgage in excess of \$144,079.20. The property is also subject to a second mortgage in favor of Universal Assurors, as scheduled by Debtor.

11. The plan, as proposed, is not made in good faith by Debtor.

. . .

12. Therefore, it is requested that the Court deny confirmation of Debtor's plan.

Dated this 12th day of October, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, Minnesota 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

WORLD SAVINGS BANK, FSB
A FEDERAL SAVINGS BANK

ADJUSTABLE RATE MORTGAGE NOTE

GDW AVERAGE DEPOSIT ACCOUNT RATE (COST OF SAVINGS) INDEX

Biweekly Payment

INITIAL 4 WEEK INTEREST MODIFICATION PERIOD

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE, MY BIWEEKLY PAYMENT AND MY UNPAID PRINCIPAL BALANCE. MY BIWEEKLY PAYMENT INCREASES, MY INTEREST RATE INCREASES AND MY PRINCIPAL BALANCE INCREASES ARE LIMITED. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT OF THE SAME DATE.

LOAN NUMBER 0013189204

DATE APRIL 21, 2000

BORROWER(S) JOHN B SCHWARTZ, AN UNMARRIED MAN

sometimes called "Borrower" and sometimes simply called "I" or "me"

**PROPERTY ADDRESS: 8000 GOLDENROD LANE NORTH
 PLYMOUTH, MN 55442**

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay US \$125,825.00, called "Principal," plus interest, to the order of the Lender. The Lender is **WORLD SAVINGS BANK, FSB, A FEDERAL SAVINGS BANK**, its SUCCESSORS AND/OR ASSIGNEES, or anyone to whom this Note is transferred.

2. INTEREST RATE MODIFICATION PERIOD

This Note contains a "Modification Period." The Modification Period begins 2 weeks before the date of my first biweekly payment, as specified in Section 4(A) of this Note and continues until **JUNE 05, 2000**.

Beginning on the date that the loan funds are first disbursed to me and continuing up to, but not including, the first day of the modification period, I will pay interest at a yearly rate of **8.030%**.

During this Modification Period, I will pay interest at the fixed yearly rate of **4.950%**. After the Modification Period, I will pay interest as described in Section 3 of this Note.

3. INTEREST

(A) Interest Rate

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. The interest rate I will pay may change as described in this Section 3. Interest will be charged on the basis of a 364-day year, divided into 26 segments of two weeks each.

The interest rate required by this Section 3 is the rate I will pay both before and after any default described in Section 5(B) of this Note.

(B) Interest Change Dates

The interest rate I will pay may change on the **5TH** day of **JUNE, 2000** and on every other Monday thereafter. Each date on which my interest rate could change is called an "Interest Change Date." The new rate of interest will become effective on each Interest Change Date.



EXHIBIT *A*

COP

3251865

REGISTER OF TITLES
BY (Signature)
DEPUTY

MAY 22 2000

OFFICE OF THE REGISTRAR
OF TITLES
HENNEPIN COUNTY, MINNESOTA
CERTIFIED FILED ON

DEC 19 2000

GENSERVICES

RECORDING REQUESTED BY:
WORLD SAVINGS BANK

ABOVE FOR RECORDER'S USE ONLY

WHEN RECORDED MAIL TO:
WORLD SAVINGS
CENTRAL PROCESSING
CLOSING DEPARTMENT
P.O. BOX 858548
SAN ANTONIO, TX 78286-8548TAX STATEMENTS FOR THE REAL
PROPERTY DESCRIBED IN THIS
INSTRUMENT SHOULD BE SENT TO:
JOHN B SCHWARTZ
8000 GOLDENROD LANE NORTH
PLYMOUTH, MN 55442LOAN NUMBER: 0013189204
NOTE AMOUNT: \$125,825.00Notwithstanding anything to the
contrary herein, the maximum
known Principal indebtedness
secured by this Mortgage

Burnet Title

MORTGAGE IS \$ 157,031.25
PURCHASE MONEY MORTGAGETHIS IS A FIRST MORTGAGE WHICH SECURES A NOTE WHICH CONTAINS
PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE, FREQUENCY AND
AMOUNT OF PAYMENTS AND PRINCIPAL BALANCE (INCLUDING FUTURE AD
VANCES AND DEFERRED INTEREST). AT LENDER'S OPTION THE SECURED NOTE
MAY BE RENEWED OR RENEGOTIATED.THE MAXIMUM AGGREGATE PRINCIPAL BALANCE SECURED BY THIS MORTGAGE
IS \$157,031.25 WHICH IS 125 % OF THE "NOTE AMOUNT".

I. DEFINITIONS OF WORDS USED IN THIS MORTGAGE

(A) Security Instrument. The Mortgage, which is dated APRIL 21, 2000,
will be called the "Security Instrument"

(B) Borrower. JOHN B SCHWARTZ, AN UNMARRIED MAN

sometimes will be called "Borrower" and sometimes simply "I" or "me"

(C) Lender. WORLD SAVINGS BANK, FSB, A FEDERAL SAVINGS BANK * *
* * * * *, ITS SUCCESSORS AND/OR
ASSIGNEES, will be called "Lender" Lender is A FEDERAL SAVINGS BANK * * * * *
* * * * * which is organized and exists under the laws of the United States Lender's
address is 1801 HARRISON STREET, OAKLAND, CALIFORNIA 94612.(D) Note. The note signed by Borrower and having the same date as this Security
Instrument will be called the "Note" The Note shows that I owe Lender the original principal
amount of U.S. \$125,825.00 ("Note Amount"), plus accrued and deferred interest
and such other amounts as stated in the Note. I have promised to pay this debt in biweekly
payments and to pay the debt in full by MAY 08, 2030.Burnet Title 00-06845
188277ED182A1 (05-15-99/1-99) JESA
DEFERRED INTEREST

MORTGAGE-ADJ. BIWEEKLY

MN



LENDER'S USE ONLY

EXHIBIT

B

0013188204

(E) **Property.** The property that is described below in Section III entitled "Description of the Property" will be called the "Property."

(F) **Sums Secured.** The amounts described below in Section II entitled "Borrower's Transfer of Rights in the Property" sometimes will be called the "Sums Secured."

(G) **Person.** Any person, organization, governmental authority or other party will be called "Person."

II. BORROWER'S TRANSFER OF RIGHTS IN THE PROPERTY

I mortgage, irrevocably grant and convey the Property to Lender subject to the terms of this Security Instrument. This means that, by signing this Security Instrument, I am giving Lender those rights that are stated in this Security Instrument and also those rights that the law gives to lenders who hold mortgages on real property. I am giving Lender these rights to protect Lender from possible losses that might result if I fail to:

(i) pay all amounts owed to Lender under the Note and all other notes secured by this Security Instrument, called the "Secured Notes," including future advances made by Lender and any changes to the Secured Notes made with the written consent of Lender,

(ii) pay, with interest, any amounts that Lender spends under Paragraphs 2 and 7 below to protect the value of the Property and Lender's rights in the Property, and

(iii) keep all of my other promises and agreements under this Security Instrument, the Secured Notes and any changes to the Secured Notes made with the written consent of Lender.

III. DESCRIPTION OF THE PROPERTY

I give Lender rights in the Property described below:

(i) The property which is located at 6000 GOLDENROD LANE NORTH, PLYMOUTH, MN 55442. * * * * * The legal description of the Property is attached as Exhibit "A" which is made a part of this Security Instrument. This Property is called the "Described Property."

(ii) All buildings and other improvements that are located on the Described Property;

(iii) All rights in other property that I have as owner of the Described Property. These rights are known as easements, rights and appurtenances attached to the Property,

(iv) All rents or royalties and other income from the Described Property,

(v) All mineral, oil and gas rights and profits, water rights and stock that are part of the Described Property;

(vi) All rights that I have in the land which lies in the streets or roads in front of, behind or next to, the Described Property;

(vii) All fixtures that are now or in the future will be on the Described Property or on the property described in subsection (ii) of this Section.

(viii) All of the rights and property described in subsections (ii) through (vii) of this Section that I acquire in the future,

(ix) All replacements of or additions to the property described in subsections (ii) through (viii) of this Section, and

(x) All of the amounts that I pay to Lender under Paragraph 2 below.

IV. BORROWER'S RIGHT TO GRANT A SECURITY INTEREST IN THE PROPERTY AND BORROWER'S OBLIGATION TO DEFEND OWNERSHIP OF THE PROPERTY

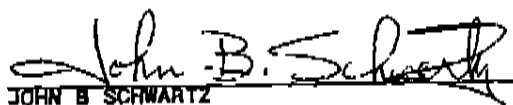
I promise that: (i) I lawfully own the Property; (ii) I have the right to mortgage, grant and convey the Property to Lender; and (iii) there are no outstanding claims, charges, liens or encumbrances against the Property, except for those which are of public record.

0013189204

BY SIGNING BELOW, I accept and agree to the promises and agreements contained in this Security Instrument and in any rider(s) signed by me and recorded in proper official records

(PLEASE SIGN YOUR NAME EXACTLY AS IT APPEARS BELOW)

BORROWER(S)

 (Seal)
JOHN B SCHWARTZ

(Seal)

(Seal)

(Seal)

(Seal)

(Seal)

ATTACH INDIVIDUAL NOTARY ACKNOWLEDGEMENT

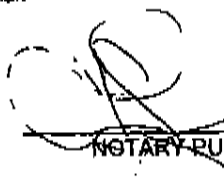
THIS INSTRUMENT WAS DRAFTED BY: WORLD SAVINGS
P.O. BOX 659648
SAN ANTONIO, TX 78285-9648

STATE OF MINNESOTA

COUNTY OF HENNEPIN

This instrument was acknowledged before me on April 21, 2000

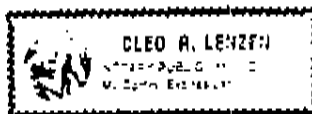
By John B Schwartz, an unmarried man



NOTARY PUBLIC

THIS INSTRUMENT WAS DRAFTED BY:

World Savings
P O Box 659548
San Antonio, TX 78265-9548



WORLD SAVINGS

E X H I B I T "A" LEGAL DESCRIPTION

LOAN NO. 0013188204

**ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF HENNEPIN
STATE OF MINNESOTA * * * * * , DESCRIBED AS FOLLOWS.**

Lot 1, Block 1, Pike Lake Terrace 1st Addition

Records of Hennepin County, Minnesota

Registered Property, as evidenced by Certificate of Title No 739748

TAPE ONLY THE LEGAL DESCRIPTION TO THIS PAGE.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

John B. Schwartz
SSN XXX-XX-5406

CHAPTER 13 CASE

CASE NO. 04-44715 RJK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on October 12, 2004, I served the annexed Notice of Objection to Confirmation of Plan and proposed Order Denying Confirmation of Plan to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

John B. Schwartz
6000 Goldenrod Ln N
Plymouth, MN 55442

Jasmine Z. Keller
12 South 6th Street, Suite 310
Minneapolis, MN 55402

Ian Traquair Ball
12 South 6th Street, Suite 326
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 12th day of October, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**ORDER DENYING CONFIRMATION
OF PLAN**

John B. Schwartz
SSN XXX-XX-5406

Debtor.

CASE NO. 04-44715 RJK

This Chapter 13 Case came on before the Court on October 21, 2004, for hearing on Debtor's plan of debt adjustment. Appearances were as noted in the record. Upon the record made at hearing, and all other files and records in this case,

IT IS HEREBY ORDERED that confirmation of Debtor's plan of debt adjustment, as filed August 24, 2004, is denied.

Dated: _____
Judge of Bankruptcy Court